

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE LOUIS TELERICO
Debtor

CASE NO. 17-50236
JUDGE ALAN M KOSCHIK
CHAPTER 11

**RESPONSE OF LOUIS TELERICO TO MOTION OF BANK OF AMERICA, N.A. FOR RELIEF FROM
STAY OR IN THE ALTERNATIVE, ADEQUATE PROTECTION PAYMENTS**

Louis Telerico, the debtor and Debtor in Possession in the within bankruptcy case (“Debtor”), responds to the Motion of Bank of America, N.A. for Relief from Stay or in the Alternative, Adequate Protection Payments [Doc. 169] (“Motion” and “BOA”).

1. The Court has jurisdiction over this matter under 28 U.S.C §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. Debtor filed this Bankruptcy Case on February 4, 2017 and has continued to operate as Debtor in Possession since that date. No committee of unsecured creditors has been established in this case.

3. The Debtor through a testamentary trust owns a house and approximately 2 acres of land at 545 Bristol Dr., Aurora Ohio, identified by permanent parcel number 03-016-00-00-173-003 and used by the Debtor as his residence (“Home”).

4. The Portage County Treasurer has a real estate tax lien against the Home in the amount of \$424,793.37 that is a first priority lien against the Home (“Tax Lien”).

5. On or about July 25, 2001 the Debtor executed a promissory note payable to Merrill Lynch Credit Corporation nka BOA in the principal amount of \$3,000,000.00 (“BOA Note”). To secure repayment of the Note on or about the same date the Debtor through the trust as mortgagor gave to BOA a mortgage interest in the House that is a second priority lien against it (“BOA Mortgage”). BOA filed proof of claim no. 11 in the Debtor’s bankruptcy case asserting

that \$3,732,925.43 was owed on the BOA Note.

6. The Motion seeks relief from the automatic stay on the grounds that the Debtor is not providing adequate protection to the interest of BOA in the Home.

7. The Motion values the Home at \$2,481,000. BOA is therefore significantly under secured and not entitled to charge interest or other charges against the estate pursuant to 11 USC §506(b).

8. BOA argues that it is not adequately protected because the Debtor has not been making monthly payments to it. An under secured creditor like BOA is not entitled to receive payments on its claim to be compensated for the time value of money. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc., Ltd.* 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1987). BOA is only entitled to adequate protection for any diminution in the value of its collateral here the Home. Id.

9. In fact the Debtor has proposed several plans of reorganization all of which proposed making monthly installment payments to BOA. BOA has filed objections to each of these plans. One could reasonably question what BOA is really seeking as it has opposed each of the Debtor's plans proposing to pay it monthly installments.

10. As noted above the BOA Mortgage is junior in priority to the Tax Lien. The Debtor has an agreement with the Portage County Treasurer to pay the past due real estate taxes in semiannual installments over five years. To that end the Debtor on July 11, 2018 paid the Portage County Treasurer \$47,099.05 as reflected on his July Operating Report [Doc. 157]. This payment was made on the current real estate taxes on the Home as well as made an initial paydown on the past due real estate taxes. This payment provided adequate protection to BOA because it reduced the amount owed on a lien senior to the BOA Mortgage, thus preserving the value of BOA's collateral.

11. While no other provision of Section 362 is relied on by BOA in its Motion, the reason for the Debtor's willingness to pay his creditors under a Chapter 11 plan is to preserve the Home. Therefore the Home is necessary for an effective reorganization.

12. Therefore BOA is not entitled to adequate protection or relief from the automatic stay.

THEREFORE, the Debtor respectfully requests that this Court enter an order denying the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this Response was served on the following on the date filed by Notice of Electronic Filing though the Court's ECF/CM system.

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